Panel Decision for dispute CAC-ADREU-007603

Case number	CAC-ADREU-007603
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Domain names	chrislube.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization

Respondent

Name	Igor Kirdun

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

None of which the Panel is aware.

FACTUAL BACKGROUND

The Complainant, Chris Jeurissen, sells parts and accessories for motorcycles, such as lubricants and coolants, in Belgium under the name Chris Lube.

The Respondent registered the domain name <chrislube.eu> (the "Disputed Domain Name") on 28 August 2017. It was previously owned by the Complainant but was allowed to lapse.

The Respondent, Igor Kirdun, is an individual based in Bulgaria.

At the time the Complaint was filed, the Disputed Domain Name was redirecting to online gambling and pornographic websites.

The Complainant filed a Complaint under the .EU Alternative Dispute Resolution ("ADR") procedure with the Czech Arbitration Court on 28 December 2017. The Complaint, initially filed in Dutch, was then submitted in English on 5 January 2018. The notice of the ADR Proceeding was sent to the Respondent by post on 16 January 2018.

The deadline for submitting the Response was 12 March 2018, but nothing was received. The Panel was appointed on 22 March 2018.

A. COMPLAINANT

The Complainant relies on Art. 8 of the Paris Treaty of 20 March 1883 which states that "[p]rotection must be granted to trade names in each Contracting State without there being an obligation to file or register the names."

The Complainant also makes reference to Art. VI. 104 of the Belgian Code of Economic Law Book VI Market practices and consumer protection. According to the translation provided by the Complainant, "Any act contrary to fair market practice which may harm or jeopardize the business interests of one or more other undertakings is prohibited". The Complainant states that it possible to call upon this provision "[w]hen someone uses your trade name or your trade name is being used which could lead to confusion".

Moreover, the Complainant asserts that he has been using the trade name CHRIS LUBE since 20 May 2016. The Complainant provides evidence of the registration of this name in the official database of the Belgian government. The Complainant also states that he has been using the trade name CHRIS LUBE on the labels of his products since 20 May 2016. The Complainant attaches photographs of these labels in support of his claim.

The Complainant further argues that he originally registered the Disputed Domain Name on 19 July 2016 and used it, together with the associated e-mail address, to sell and promote his products. The Complainant points out that he uses the same string under another Top Level Domain (<www.chrislube.be>).

The Complainant states that that the Disputed Domain Name was registered by the Respondent when it was inadvertently allowed to lapse, with the sole purpose of luring Internet users to online gambling and pornographic websites.

The Complainant asserts that he has found no evidence of any rights or registration of the trade name CHRIS LUBE by the Respondent.

The Complainant therefore concludes that there are sufficient grounds to transfer the Disputed Domain Name to the Complainant.

B. RESPONDENT

The Respondent did not reply to the Complainant's contentions.

DISCUSSION AND FINDINGS

Paragraph B11(d)(1) of the Rules provides that the Panel shall issue a decision granting the remedy requested in the event that the Complainant proves the following:

"(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either

(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) The domain name has been registered or is being used in bad faith."

Taking each of these issues in turn, the Panel decides as follows:

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has been using the trade name CHRIS LUBE since 20 May 2016 as he has provided evidence of the registration of this name in the official database of the Belgian government. The Complainant has also provided photographs of his product labelling referencing CHRIS LUBE to prove such use, together with invoices and e-mails.

In view of the above, the Panel is therefore satisfied that the Complainant has established relevant rights in the term CHRIS LUBE.

The Panel considers that, as previously held in numerous other Panel decisions, the generic top level domain suffix .EU is without legal significance and has no effect on the issue of similarity.

On the basis of these considerations, the Panel finds that the Disputed Domain Name is identical to Complainant's rights recognised or established by the national law of an EU Member State and/or Community law. Paragraph B11(d)(1)(i) of the Rules is therefore satisfied.

B. Rights or Legitimate Interests

The second element to consider under Paragraph B11(d)(1)(ii) of the Rules is whether the Respondent has registered the Disputed Domain Name without rights or legitimate interests in it. Paragraph B11(e) of the Rules sets out various ways in which a respondent may demonstrate rights or legitimate interests in a domain name, without limitation, as follows:

"(1) prior to any notice of the dispute, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

(2) the Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law;

(3) the Respondent is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or Community law."

As far as the burden of proof is concerned, the Panel finds the CAC .EU Overview 2.0 to be very useful. The Panel subscribes to the majority view which provides that the Complainant only needs to establish a prima facie case concerning the Respondent's lack of rights or legitimate interests and the onus then shifts to the Respondent to rebut the Complainant's assertion (see Section I Paragraph 17 of the CAC .EU Overview 2.0).

In the Panel's view, the Complainant has established a prima facie case of lack of rights or legitimate interests, while the Respondent did not file a Response to the Complaint and has thus failed to rebut that demonstration. It should be noted that a respondent's simple failure to file a response is not a definitive indication of a lack of rights or legitimate interests, and the Panel only finds as such in light of the facts of this particular case.

The Panel finds that none of the circumstances mentioned in Paragraph B11(e) of the Rules as evidence of a Respondent's rights or legitimate interests in the Disputed Domain Name can be inferred from the documents enclosed with the Complaint. In particular:

1. The Respondent has not used the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with the offering of goods or services and has not made demonstrable preparations to do so. Instead the Respondent has used the Disputed Domain Name to direct Internet users to various online gambling and pornographic websites. In the Panel's opinion, this practice would only be considered legitimate if the chosen domain name was descriptive or generic, which is not the case here, given that the Disputed Domain Name is identical to the Complainant's trade name.

2. There is no evidence that the Respondent has been commonly known by the Disputed Domain Name.

3. The Respondent is not making a legitimate and non-commercial or fair use of the Disputed Domain Name, without intent to mislead consumers. Instead the Respondent is making a commercial use of the Disputed Domain Name to generate revenue from redirecting traffic intended for the Complainant to other websites.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Paragraph B11(d)(1)(ii) of the Rules is therefore met.

C. Registered or Used in Bad Faith

The third element that falls to be considered under Paragraph B11(d)(1)(iii) of the Rules is whether the Disputed Domain Name has been registered or is being used in bad faith. However it should be noted that consideration of this element is not strictly required in this particular instance as it is only necessary for a Complainant to prove either the second element under paragraph B11(d)(1)(ii) or the third element under paragraph B11(d)(1)(iii). In this case the Panel has found that the Respondent has no rights or legitimate interests in the Disputed Domain Name under paragraph B11(d)(1)(ii), thus satisfying the conditions to issue a decision granting the remedy requested. Therefore the Panel does not need to go on to consider the question of registration or use of the Disputed Domain Name in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Disputed Domain Name be transferred to the Complainant.

PANELISTS

Name	**Jane Seager**

DATE OF PANEL DECISION 2018-04-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel found that the Complainant had relevant rights in the term CHRIS LUBE. Furthermore, the Panel found that the Disputed Domain Name was identical to such rights. Paragraph B11(d)(1)(i) of the Rules was therefore satisfied.

The Panel considered on the evidence put forward by the Complainant that the Respondent had no rights or legitimate interests in the Disputed Domain Name, and the Respondent did not reply to rebut the Complainant's prima facie case. Paragraph B11(d)(1)(ii) of the Rules was therefore met.

In view of that finding, the Panel did not need to consider whether the Respondent had also registered or used the Disputed Domain Name in bad faith under Paragraph B11(d)(1)(iii) of the Rules.
The Panel therefore ordered that the Disputed Domain Name be transferred to the Complainant.